

Transportation Commission of Colorado
Regular Meeting Minutes
January 21, 2010

Chairwoman Kim Killin convened the meeting at 9:39 a.m. in the auditorium of the headquarters building in Denver Colorado.

PRESENT WERE: Kimbra L. Killin, Chairwoman, District 11
Les Gruen, Vice Chair, District 9
Michael Cheroutes, District 1
Jeanne Erickson, District 2
Gary Reiff, District 3
Heather Barry, District 4
Bill Kaufman, District 5
George Krawzoff, District 6
Doug Aden, District 7
Gilbert Ortiz, Sr., District 10
Stacey Stegman, Secretary/Public Relations Director

EXCUSED: Steve Parker, District 8

ALSO PRESENT: Executive Director Russ George
Peggy Catlin, Deputy Executive Director
Pam Hutton, Chief Engineer
Jennifer Finch, Transportation Development Director
Casey Tighe, Audit Division Director
Rick Gabel, Staff Services Director
Tony DeVito, Region 1 Transportation Director
Tim Harris, Region 2 Transportation Director
Weldon Allen, Region 3 Transportation Director
Bob Garcia, Region 4 Transportation Director
Reza Akhavan, Region 6 Transportation Director
Herman Stockinger, Government Relations Director
Cheryl Wright, Center for Procurement
Ben Stein, Financial and Budget Manager
Harry Morrow, Chief Transportation Counsel
Karla Petty, Federal Highway Administration
Vince Rogalski, Statewide Transportation Advisory
Committee (STAC) Chairman

AND: Other staff members, organization representatives,
the public and the news media

Two audiotapes of the meeting were made and supporting documents are filed in the Transportation Commission office.

Audience Participation

Debra Baskett, City & County of Broomfield and representing U.S. 36 Mayor's and Commissioners Coalition relayed Broomfield's appreciation and thanks for CDOT's participation on the U.S. 36 EIS and planning. She also asked for the Commission's support to approve the modifications of seven interchanges along U.S. 36. She noted that one of the needs identified in the EIS is to upgrade the bridges in the Wadsworth Blvd. interchange. She expressed appreciation for the partnership with CDOT and staff over the years and with approval of the EIS and with the Commission's approval of the system level study U.S. 36 is ready to go.

Commissioner Kim Killin thanked Ms. Baskett.

Tom Mowle, Public Trustee and citizen of El Paso County also addressed the Commission. He is also the 1st vice-chair of the Community Advisory Council (CAC) to Pikes Peak Area Council of Governments (PPACG) and representing CAC's position with approval from its Chair. CAC requested that the Commission delay approval of the consent agenda item SH 94 Reclassification. The Commission is being asked by staff to consider reclassifying Highway 94. Development of an Access Management Plan (AMP) would be completed sometime later in parallel with the reclassification process. He said the CAC believes it is more appropriate to complete the AMP before the completion of the reclassification process. He also expressed concern that stakeholder interest may not be accounted for, especially Schriever AFB which also presented opposition to reclassification without development of the plan.

Commissioner Gruen, responded to Mr. Mowle by indicating that approval of this resolution furthers this process and that CAC will have further opportunity to share their thoughts during the process. He asked Mr. Mowle if it was his desire to pull the item off the consent calendar or was his discussion simply to share the CAC's concerns. Mr. Mowle's concerns were documented in a one-page handout that was distributed to the Commission and is posted below.

COMMENTS ON HIGHWAY 94 RECLASSIFICATION

Thomas S. Mowle

1st Vice-Chair, Community Advisory Council to Pikes Peak Area Council of Governments

1. At its December 2009 meeting, the CAC unanimously passed a motion of disapproval of the PPACG Board of Directors decision to proceed with Highway 94 reclassification immediately, with an Access Management Plan proceeding in parallel.

a. The CAC does not think it was given an opportunity to weigh in on this option, believing that the option on the table was for an AMP to be developed first, followed by reclassification.

b. If the CAC had been given the opportunity to provide input, it would have opposed this option.

c. The CAC presented its position to the PPACG Board on January 13, unsuccessfully asking it to reconsider its recommendation.

d. I am here as a citizen of El Paso County, relaying the CAC's position but not officially speaking for the CAC.

2. The drawbacks to immediate reclassification include:

a. We have only a verbal promise from El Paso County that a plan could be developed within a year. If the proper stakeholders are involved, this process could take much longer than that.

b. The AMP must address the interests of key stakeholders. For example, Schriever AFB's stated position was that reclassification of Highway 94, except the short section from Curtis to Enoch, needs to wait not only on an AMP, but an AMP that addresses its interests and that includes an oversight committee on which it has representation.

c. The promise to withhold granting additional access pending the development of the AMP is hollow, since such permits cannot be withheld indefinitely; again there is no guarantee of when the plan will be complete or what it will include.

d. No clear and convincing reason for the urgency of the reclassification was given. Delaying the reclassification until after the AMP is developed and approved hurts no one.

3. Beyond the CAC's objection to the process by which this recommendation was reached, and the timing of the development of the AMP, the CAC is not convinced that the reclassification itself is a good idea, unless in context with a fairly restrictive AMP.

a. This is already a very dangerous road, and the reclassification will make it more dangerous.

b. Schriever AFB is concerned about the safety of the road, and thus opposes reclassification (except for a short portion) unless the AMP addresses the safety of the airmen stationed there and the military families that soon will be living on base.

c. While safety may not be the only factor to consider, it is a very important factor.

d. Safety aside, this is the only east-west through route for the east-central portion of El Paso County. It would be nice to preserve that for future development, rather than increasing congestion.

4. I ask the Transportation Commission to delay approval of the El Paso County request for reclassification of Highway 94 until after an Access Management Plan is developed and accepted by the key stakeholders. Or, refer the El Paso County request for immediate reclassification back to the PPACG board, to be reconsidered in context with the CAC's position.

Commissioner Gruen deferred to Chairwomen Killin and thanked Mr. Mowle for his presentation.

Chairwoman Killin introduced and welcomed Juliet Moores to the podium.

Juliet Moores, Elk Creek Sand and Gravel, thanked the Commission for allowing her to speak. She last spoke to the Commission in December 2009. She thanked Commissioner Erickson for visiting with her. She presented an update of what has occurred since December's meeting. According to Ms. Moores, CDOT has done an investigation of her claims alleging bid irregularities with the Shaffers Crossing project ES12854-117. At the Dec. '09 meeting, Ms. Moores noted her concern of "bid shopping". She is claiming that the general contractor gave her bid to a competitor and asked the competitor to beat Ms. Moores' price. She also asked that her written comments from the January 21, 2010 meeting be added to the Regular Commission Meeting minutes for the record.

The following document was read to the Commission by Ms. Moores.

1-21-10

Members of the Board, Thank you for letting me speak today. Since I spoke in December I thought I would update the committee.

I have heard -- although secondhand -- that CDOT has concluded its investigations. This was an investigation conducted without my full participation, that I was told by the AGI would not be conducted by CDOT since there was a conflict of interest and was instead to be conducted by FHWA. This was an "investigation" conducted behind closed doors, to which I was not invited to provide my own defense, wherein serious allegations were made regarding my character and conduct. This was an investigation that I have never received written conclusions regarding, nor have I been privy to its findings, despite the fact that those findings directly impact my company and business negatively. This investigation was regarding a dispute between two parties. Under any other adversarial system -- correct me if I am wrong Mr Cheroutes, both parties would be able to present -- and defend -- their sides.

That has not happened and it clearly demonstrates the arrogance with which CDOT and FHWA deal with smaller subs and suppliers. This investigation was conspicuously one-sided and lacked any level of transparency or due process.

Furthermore, when one calls FHWA, they claim that CDOT is still in the process of conducting an investigation and pass the buck also. But CDOT claims that FHWA is now in charge of the investigation. At this point this is nothing more than smoke and mirrors. This is not an issue of entitlement. This has become an issue of a large government body wielding its authority in a manner that is inconsistent with legal and ethical standards behind closed doors.

This was a clearly a case of bid shopping -- trying to disguise it as something else or dress up as something else does not conceal the truth -- a sow's ear is still a sow's ear Tony. Allow me to provide the definition of bid shopping

"In construction law, bid shopping is the practice of divulging a contractor's or subcontractor's bid to other prospective contractor(s) or subcontractor(s) before the award of a contract in order to secure a lower bid. Lowered bids may lead to cost cutting in the construction process, primarily in materials and labor, which may lower the quality of the work performed. At least seven states have adopted some type of anti-bid shopping legislation. These states recognize that bid shopping can result in poor quality, unfair competition and insolvencies. These statutes require general contractors to list the subcontractors that they will use in their bids to owners. The general contractor cannot change subcontractors if its bid is accepted."

Bid shopping is a chronic problem and reduces diversity within the pool of subs and suppliers. It is illegal in 7 other states. Bid shopping is particularly egregious and hard on minority and women owned subs or suppliers who may not have the resources that the general or owner -- in this case CDOT has -- to defend themselves. Isn't it true Mr Cheroutes that in order to engage a law firm of your caliber to pursue this claim, that I would have to provide a retainer in excess of \$50,000. Bid shopping engenders serious safety concerns, as exist on this job and quality concerns, as already demonstrated on this job. The long-term effects of this practice will drive the net cost of construction, and construction claims, through the roof in the next 5 to 10 years.

There exists a bill in Congress currently in front of a special committee, HR 3492, the Construction Quality Assurance Act of 2009 that would assure quality and best value with respect to Federal construction projects by prohibiting the practice known as bid shopping. The bill is sponsored by Rep Paul Kanjorski (D -- Penn) and co-sponsored by Carolyn Maloney (D-NY).

This bill is supported by numerous other engineering, estimating and construction professional associations including the American Inst. Architects, Association of Subcontractors and others. I strongly encourage you to support this bill and condemn this practice. Federal Govt. is the largest single purchaser of small business goods and services in the nation. The State is the largest single purchaser of goods and services from small business within the State of Colorado. Both the Federal Govt. and the State have a duty to lead by example and condemn and sanction this practice.

Ms. Moores asked the Federal Highway Administration and CDOT to consider some kind of agreement that condemns the practice of bid shopping and consider supporting a bill.

Chairwoman Killin thanked Ms. Moores and called on Commissioner Erikson. Commissioner Erickson noted that she had the opportunity to meet with Ms. Moores about 10 days ago to discuss these concerns with her. Commissioner Erikson also thanked her for entering her comments into the record.

Chairwoman Killin asked if there was any other public participation. There was none.

Individual Commissioner Comments

All of the commissioner declined to comment with the exception of Chairwoman Killin. She commented that she attended the Eastern TPR meeting with Regional Director's DeVito and Garcia and expressed her appreciation for how region staff did a great job educating the folks and listening to what they had to say.

Executive Director Report

Executive Director Russ George shared his thoughts about the New Year and feels that CDOT is starting the year in a good position to accomplish great things for the public's good. He also shared a letter of commendation from a traveler from Mississippi about CDOT employee Mark Gocha, Region 5 Maintenance, who repaired this motorist's broken fan belt. The traveler commended Mr. Gocha's knowledge, skills and willingness to help. Director George thanked Mr. Gocha and acknowledged all CDOT employees that do these good things.

Chairwoman Killin added that Director George and a few Commissioners attended the transportation committee meeting at the state Capitol and she commended Director George on the magnificent job he did fielding questions. She added that he was also recognized by Senator Copp on the way he handles issues. Chairwoman Killin noted how proud the Commission is to have Director George at the helm of CDOT.

Chief Engineer's Report

Chief Engineer Pam Hutton gave her monthly report regarding the status of ARRA #1 and talked about ARRA #2.

- Ms. Hutton started off with telling the Commission that CDOT has seen a slight decline in the number of jobs in December because projects typically shut down during the winter.
- CDOT has 100 projects identified between the Department and the local agencies and all have been certified.
- CDOT has obligated 83 projects worth \$356(M) which is 92% of the allocation.
- 82 projects have been advertised, 70 contracts awarded and 64 notice's to proceed have been issued.

- As of January 19, CDOT budgeted and planned for \$384.8(M) which is 99.8% of the allocation.
- Her construction update through December entails 17 completed construction projects that expended \$98.6(M) which represents over one quarter of the money CDOT was allocated.
- \$800,000 remains yet to be budgeted (2%)
- \$26(M) yet to be obligated in eight projects.
- Any further ARRA savings realized will be accounted for by swapping funds with non-ARRA. For final projects there are a mixture of funds, some ARRA and some regular federal funds. CDOT plans to spend ARRA dollars first on each of those projects so as not to have savings to the extent possible in the projects that are on-going. If there is a surplus or deficit in those projects they will be accounted for with non-ARRA funds.
- There is a possibility that after the last of the ARRA projects are advertised CDOT could de-obligate some dollars before going to final contract on the final projects. Ms. Hutton does not believe this will be the case, but she wants the Commission to know in case there is a project with mixed funding that will need approval after March 2. This is all part of a strategy to get to the March 2 deadline and she assured the board that CDOT is in very good shape.

Report on Transit

CDOT has a \$12.5(M) project in Summit County that has been advertised and is under construction. The project won't be complete until after March 2nd. This left \$2.2(M) that had to be accounted for and CDOT did this by allocating several projects for grants to Costilla County – for The Summit Stage and for the Ute Community Action Programs. This was done for \$390,000, leaving \$1.8(M) that will be used for capital purchases. DTD staff has applied to FTA to make sure the money is getting obligated.

Report on Reporting

Ms. Hutton reported that there was a big round of reporting to the GAO who was doing their 5th round of auditing starting January 8. CDOT had an OMB quarterly report due as well. It was submitted to Governor's ARRA team on January 14. They submitted it to www.federalreporting.gov on January 15. CDOT had to prepare a House TNI report and submitted it on January 19.

Report on New Jobs Bill

Ms. Hutton noted that CDOT is aware of a version that was passed in the House in December however the Senate had not yet taken it up for consideration. The bill is written (as of the Commission meeting) with a similar amount as last year, approximately \$27.5 billion nationally which means that Colorado would receive around

\$400(M) for highways. Under the bill there is an expedited schedule which is a concern for the Department but Ms. Hutton noted that failure would not be an option for CDOT. She also shared that there is similar concern across the nation that fifty percent of the work would have to be under contract in 90 days. She indicated that they are working on the best plans possible to meet the requirements.

Chief Engineer Hutton shared that staff has been working with FHWA, local agencies and the STAC to prepare for this bill. All have been accommodating and understanding of the need to move fast. The regions are working on draft allocations and from those the regions are putting together their lists of anticipated projects of what could be ready to go by March 1 if the bill is signed. They are also reviewing different project types and are starting with the foundation A, B, C lists from last year.

Chairwoman Killin commended the staff's commitment and follow through and expressed confidence in the staff's work.

FHWA Division Administrator Report

FHWA Division Administrator Karla Petty

Ms. Petty reported that they are working under a continuing resolution and extension of SAFETEA-LU. She commended Ms. Hutton's excellent update on the Recovery Act. She gave compliments to the staff. Ms. Petty talked about Reporting. FHWA analyzes the data that comes in from these reports. It is always comforting to them to read the first line that goes to CDOT and how the database shows Colorado has no missing or incomplete data. There are other states do have incomplete reports.

On getting to the March 2 obligation, FHWA feels very comfortable with the obligation plan CDOT has out laid and FHWA is working with CDOT to ensure that 100% of the funds will be obligated that day.

Ms. Petty remarked about Recovery Act 2 in that FHWA is assured that CDOT can deliver but there are many challenges ahead. She asks that CDOT be flexible and that business may be done differently than in the past as \$202(M) would have to be obligated and that means identifying those projects before funding is realized. She encouraged all to be open minded.

Petty added that with some of the recent mid-year elections there may not be as much confidence that there will be a Recovery Act II, but if there is, CDOT is in the position to be prepared.

Lastly, she reported the status of the Highway Trust Fund which fell by \$387M to \$5.7 billion as of December 31, 2009. Receipts for the first quarter of FY 2010 were 3.6% lower than the receipts were in the first quarter of FY 2009. Outlays were 15.6% lower.

Statewide Transportation Advisory Committee Report

STAC Chairman Vince Rogalski provided a summary of the last meeting.

- Government Relations Director Mr. Stockinger presented the Congressional Notebook to the group and received approval from STAC and to move it forward.
- Eric presented the Federal Livability Initiative. STAC recommended approval of the Initiative.
- Ms. Finch gave an update on the CMAQ negotiations and discussions.
- Mr. Garcia continued to present on the FASTER safety projects and process. STAC didn't take an official vote but a non-vote that was "yes" to continue the process. There is a consensus among the STAC members that the process is moving along well and they will likely approve it next month and recommend it to the Commission.
- Ms. Copp presented on revenue projections. After viewing all of the scenarios STAC recommend to the Commission scenario #1.

Chairman Rogalski talked about Ms. Copp's presentation on the Jobs Bill/ARRA II to the STAC and they had a long discussion about all the requirements that come with it. According to the Chairman Rogalski what has developed is the cooperation between each STAC member and the TPR's and MPO's. He reflected that over the years there is a growing trust among the members and they are looking at the state as a whole and what has to be done around the state. The STAC members are understanding that in this legislation there may be money issues but now people have a higher level of trust and a higher level of cooperation.

Commissioner Gruen commented that it is gratifying to know that STAC is taking more of a holistic approach as opposed to a parochial approach.

Commissioner Erickson thanked STAC Chairman Rogalski for his work. She said that she has been involved in STAC for many years prior to becoming a Commissioner and that she sees the truth of what he said and it is gratifying.

Committee reports

Transit & Intermodal

Chairwomen Killin announced that Commissioner Erickson is the new chair. Commission Erickson reported the following:

- First action of the committee was to elect Commissioner Erickson as Chairwoman and Commissioner Krawzoff as Vice-Chairman.
- Staff presented information on two grant applications that will be considered and are on the agenda.
 - 1) A bike/ped. grant request from Kaiser Permanente
 - 2) A grant request to FTA under their Livability Initiative

The committee recommends approval of both grant requests.

The Interim Transit and Rail Advisory Committee will be joined by the representatives from the Ohio, Pennsylvania and Washington DOT's at the meeting this afternoon as a peer exchange financed by the Federal Transit Administration. Commissioner Erickson commented that this a great opportunity to learn how other DOT's have incorporated transit into their organizations.

Staff presented seven draft options for a local transit grant program funded by FASTER. The Committee has asked that these options continue to be refined and presented at a workshop in February.

Mountain Metro did not receive any bids for the five FREX busses that were to provide operating funds for FREX service. Lately some interest has been expressed but staff is unsure if any options remain to continue service. Consideration must now given to the potential for transferring ownership or sale of all 19 FREX busses. A special meeting on conference call of the Commission is likely to be required.

Efficiency and Accountability Committee

Committee Chairwoman Lewis relayed that her last name is now Lewis-Baker due to her marriage in December. Her report is as follows:

The last meeting was on December 17. The committee is meeting at 2pm on January 21. At the December 27 meeting, the committee continued to identify the process of identifying areas of risk or concern that weren't further studied by the committee. The contracting process, the planning process and the contract administration process were identified as areas that the committee wanted to focus on. There was some discussion of looking at CDOT's energy use and seeing if there were any cost savings or environmental improvements that could be made related to energy consumption. The committee went back to focus their attention on the mechanics of how they would look at completing these studies in the various areas and what the finished product was going to be.

The three initial topics the committee selected to explore are bid-plans, paper use, and printing. It is their understanding that CDOT only charges \$10 for a set of bid-plans but logical reasoning suggests the cost has to be more than \$10.

Ms. Lewis – Baker mentioned that at the afternoon meeting, staff will be presenting information that was gathered on the topics and reporting the findings. The committee is optimistic they will recommend to CDOT some efficiency in those areas. She said that even though the first recommendations may be modest improvements, the committee is excited to get started. The staff is also providing a progress report on CDOT's effort to hire a consultant to conduct an assessment of CDOT's contracting process.

High Performance Transportation Enterprise Committee (HPTE)

Commissioner Cheroutes reported on the High Performance Transportation Enterprise Committee.

The Board met at its regular session on Jan. 19. There were a couple of absences because of illness. They had a productive meeting. There was time spent talking about staffing issues. They have a reasonable solution to staffing problems, proposing to use an existing contract with HNTB for consulting services. David Downs of HNTB was identified as being committed to the committees' needs and the committee was comfortable with him as staff. Mr. Larry Warner will sub-contract and partner with Mr. Downs, staffing the committee's activities going forward on an interim basis which is likely to be through the calendar year.

CDOT staff provided the committee with an overview of some corridors that could be potential HPTE projects in the future. Those corridors are I-70 west, C-470, I-25 north and US 36. The HPTE's next meeting is February 3rd in Frisco and is being held jointly with the I-70 Coalition's session to hear about what is going on and how the Enterprise can provide assistance.

Peggy Catlin, stated that by statute CDOT is required to have an Annual Report that has to be completed by January 15. It is done and posted on the Web site. The activities of the High Performance Transportation Enterprise are summarized and also for the Tolling Enterprise 2009.

Consent Agenda

Chairwoman Killin asked for consideration of the consent agenda. She noted the public comment from Mr. Mowle on item C on the agenda. She expressed understanding that there will be opportunities for public comment during the reclassification process and that the item will be come back to the Commission for action once the input has been taken from the public.

Commissioner Kaufman moved for adoption of the consent agenda. Commissioner Erickson seconded the motion and on a vote of the Commission, the following resolutions were unanimously adopted.

Commissioner Gruen commented to the others that if he felt for a moment that Mr. Mowle and his colleagues would not have the opportunity for more public comment on the reclassification process, he would have asked this item to be pulled from the Consent Agenda. Commissioner Gruen added that the reclassification process provides exactly what Mr. Mowle and his colleagues are asking for, which is for the opportunity to publicly comment. The Commission will hear about it again in a few months and will have the opportunity to vote.

Resolution Number TC-1808

BE IT HEREBY RESOLVED, the Transportation Commission's Special and Regular Meeting Minutes of December 16 & 17, 2009 are hereby approved as published in the official agenda.

Resolution Number TC-1809

WHEREAS, the Colorado Transportation Commission has statutory authority pursuant to 43-1-106, C.R.S. to approve, accept, and amend various planning documents resulting from Section 135 Title 23 of the USC, and 43-1-1101 through 1105 C.R.S.; and

WHEREAS, the Commission adopted the 2008 – 2013 Statewide Transportation Improvement Program (STIP) in March, 2008; and

WHEREAS, the STIP is occasionally amended due to significant changes in project scope or projects need to be programmed in or out of the first four years of the STIP, thereby requiring a policy amendment to the STIP; and

WHEREAS, the Section 450 Title 23 of the CFR requires a public process be implemented for review and comment on proposed policy amendments, as well as Transportation Commission approval of said amendments; and

WHEREAS, the public process for the policy amendments set before the Commission for the month of Amendment #21 was provided from December 14, 2009 through January 20, 2010 and no comments were received; and

WHEREAS, it is requested that the Transportation Commission approve the policy amendments to the STIP which are detailed in the attached table and direct staff to forward this approval to the Federal Highway Administration and the Federal Transit Administration for concurrence.

NOW, THEREFORE, BE IT RESOLVED, the attached STIP Policy Amendment package for Amendment #21 be adopted and forwarded to the Federal Highway Administration for concurrence.

BE IT FURTHER RESOLVED, after said concurrence is received from the Federal Highway Administration, staff from the CDOT Office of Financial Management and Budget will finalize the policy amendments in the STIP Database.

Resolution Number TC-1810

WHEREAS, section 43-2-147(4) C.R.S., directs the Transportation Commission of Colorado ("Commission") to adopt a state highway access code ("Code"), by rule and regulation concerning the management of vehicular access to and from state highways from or to property adjoining the state highway with such management to be based in part on a functional classification of highways; and

WHEREAS, in 1998, the Commission adopted the Code and in 1999, the Commission subsequently adopted a State Highway Access Category Assignment Schedule

("Schedule") which assigned a functional access classification category to every segment of the Colorado State Highway System; and

WHEREAS, the Code directs the Department of Transportation ("Department") to initiate a rule-making proceeding in accordance with the Administrative Procedures Act, section 24-4-103 C.R.S., when local governments make requests for revisions to access category assignments and the Department staff did so in accord with applicable requirements; and

WHEREAS, the Department staff recommends revising the Schedule to reflect previous highway abandonment actions, administrative revisions to highway references, new highway construction projects and to reflect current conditions; and

WHEREAS, the Department staff has prepared and submitted proposed revisions deemed necessary to be responsive to local government requests, to update the rules to reflect abandonments, revised highway references, administrative changes and current conditions; and

WHEREAS, the Commission agrees that consideration of revisions to the Schedule is appropriate; and

WHEREAS, the Transportation Commission has the authority to conduct the rule making hearing pursuant to §43-1-108, C.R.S., or to delegate the authority to an Administrative Hearing Officer for the purposes of conducting the rule making hearing, making a complete procedural record of the hearing, and submitting that record and any recommendations back to the Transportation Commission for its review and action concerning the promulgation of the rules; and

NOW THEREFORE BE IT RESOLVED, the Transportation Commission authorizes staff to prepare a draft of proposed rule amendment, and to take all necessary actions in accordance with the APA, § 24-4-103 C.R.S. to initiate rule making for the purpose of promulgating the rules.

BE IT FURTHER RESOLVED, the Transportation Commission delegates its authority to conduct the rule making hearing to a CDOT administrative procedures officer and hereby directs the Hearing Officer to prepare a complete record of the hearing and forward said record to the Transportation Commission for consideration and its adoption of the proposed rules at or before its June 2010 meeting.

Discuss and Act on Request for Approval of Modification to Seven Interchanges of U.S. 36

Region 6 Director Reza Akhavan and Traffic and Safety Engineer Steve Hersey. provided a presentation on U.S. 36 and the seven interchange improvements. They requested from the Commission, approval of the seven interchange modifications, consistent with CDOT Policy Directive 1601 and the U.S. 36 Environment Impact Statement.

Commissioner Aden commented that he is very supportive and a huge fan of the project and process that was used. He thinks the model can be used in other parts of the state. He hopes that a significant amount of the TIGER money, if CDOT receives any, goes into this project. Commissioner Aden wanted to point out that the \$700 million in fiscally constrained plan for this project is a good example of what the Commission talked about Wednesday in the 2035 year plan and the revenue projections. Aden added that a good portion of the money does not exist with what is known today in terms of what was in the original 2035 plan versus today's funding. He commented that when looking at the long range plan and dollars programmed, people need to be realistic what the chances may not be there.

Commissioner Barry moved for adoption of the resolution. Commissioner Erickson seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC-1811

WHEREAS, in October 2008, the Transportation Commission approved revisions to Policy Directive 1601 concerning the state highway interchange approval process; and

WHEREAS, the Colorado Department of Transportation (CDOT) completed the Final Environmental Impact Statement (FEIS) for the US 36 corridor (hereinafter referred to as "the Project"), which includes proposed interchange improvements at Pecos Street, Federal Boulevard, Sheridan Boulevard, Church Ranch Boulevard, Wadsworth Parkway/120th Avenue, Interlocken Loop/Flatirons, McCaslin Boulevard, I-25/Broadway and Table Mesa Drive/Foothills Parkway as part of the identified preferred alternative; and

WHEREAS, a preferred configuration has been identified in the FEIS for seven of the above referenced nine interchanges at Pecos Street, Federal Boulevard, Sheridan Boulevard, Church Ranch Boulevard, Wadsworth Parkway/120th Avenue, Interlocken Loop/Flatirons, and McCaslin Boulevard; and

WHEREAS, a preferred configuration has not yet been identified for the remaining two interchanges at I-25/Broadway and Table Mesa Drive/Foothills Parkway; and

WHEREAS, the FEIS for the US 36 Corridor was released for public review and comment on November 1, 2009 and the public comment period closed on December 15, 2009; and

WHEREAS, a Record of Decision on the US 36 Corridor FEIS was signed on December 24, 2009; and

WHEREAS, the FEIS has analyzed traffic operations of the Project and found the proposed improvements to be consistent with the corridor's need to improve mobility; and

WHEREAS, by approval of the Chief Engineer on January 12, 2009, the FEIS and its supporting technical reports, which include the operational feasibility of the proposed improvements, shall serve as a substitute to the system level feasibility study for purposes of this approval process; and

WHEREAS, the total estimated cost of the Project is approximately \$1.3 billion in 2008 dollars; and

WHEREAS, due to funding limitations, the FEIS identifies a first phase of improvements that can be reasonably be funded by the \$711 million (in 2008 year dollars) identified for the corridor in the 2035 Fiscally Constrained Long Range Plan as the scope proposed for inclusion in Record of Decision (ROD); and

WHEREAS, Phase 1 of the Project would construct one new managed lane in each direction starting from Federal Boulevard at the end of the existing toll express lanes to just east of the Foothills Parkway/Table Mesa Drive interchange in Boulder. Phase I also would complete the reconstruction of the interchanges at Wadsworth Parkway and Sheridan Boulevard; and

WHEREAS, proposed reconstruction of the remaining seven interchanges would be completed in future phases of the project; and

WHEREAS, prior to beginning work on Phase 1 of the Project, CDOT is seeking Commission approval of the improvements to all seven of the interchanges for which a preferred configuration has been identified in an effort to minimize expenses in future Project phases; and

WHEREAS, the first phase of the project is proposed to be jointly funded by CDOT, the Regional Transportation District (RTD) as part of its FasTracks program, and local jurisdictions along the corridor; and

WHEREAS, CDOT, RTD and the local jurisdictions have been and will continue to actively pursue additional funding sources, which are not limited to state and federal funds; and

WHEREAS, all costs and responsibilities associated with project financing, construction, maintenance and operations shall be determined through Intergovernmental Agreement(s) approved by the Chief Engineer between CDOT, RTD and the local jurisdictions; and

WHEREAS, approval of the Final Construction, Maintenance and Operations IGA(s) by the Chief Engineer is necessary prior to construction; and

WHEREAS, CDOT must demonstrate significant progress towards implementation of the Project within three (3) years of the date of approval of this resolution.

NOW THEREFORE BE IT RESOLVED,

1. The Transportation Commission approves the request for modifications to interchanges on US 36 at Pecos Street, Federal Boulevard, Sheridan Boulevard, Church Ranch Boulevard, Wadsworth Parkway/120th Avenue, Interlocken Loop/Flatirons, and McCaslin Boulevard as meeting the standards set forth in Policy Directive 1601.
2. The Transportation Commission approves the FEIS, in lieu of the system level feasibility study, for the Project.
3. The Chief Engineer is authorized to enter into IGA(s) with the RTD and local jurisdictions for the financing, construction, maintenance and operations of the facilities associated with the Project.
4. These approvals are contingent on:
 - Completion and approval of the appropriate National Environmental Protection Act (NEPA) decision document consistent with the CDOT Environmental Stewardship Guide; and
 - Approval of applicable access, design and environmental permitting documents by the appropriate agencies; and
 - Approval by the Chief Engineer of IGA(s) for the financing, construction, maintenance and operations of the facilities associated with the construction of the proposed improvements.
5. For the interchanges not included in Phase I (US 36 at Pecos Street, Federal Boulevard, Church Ranch Boulevard, Interlocken Loop/Flatirons, and McCaslin Boulevard), these approvals are further contingent on:
 - Inclusion of the proposed improvements in the fiscally constrained regional transportation plan and state transportation improvement program.

Discuss and Act on FY11 Congressional Notebook

Mickey Ferrell presented for Herman Stockinger who was not available. He has requested from the Commission approval of the resolution and to allow staff to move forward with the Congressional Notebook which will be submitted by the Executive Director to the Congressional Delegation in February.

Commissioner Kaufman moved for adoption of the resolution. Commissioner Krawzoff seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC-1812

WHEREAS, the Transportation Commission submits an annual request for Federal Discretionary Funds; and

WHEREAS, this funding request consists of critical highway, aviation and transit projects that qualify for various federal discretionary funding; and

WHEREAS, the Colorado Department of Transportation has prepared a list of priority highway and aviation projects that address pressing needs of the state transportation system and that are included in the Statewide Transportation Improvement Program (STIP); and

WHEREAS, the list was developed in cooperation with the Statewide Transportation Advisory Committee (STAC) and the Transportation Commission has reviewed and discussed this proposed list of projects with Department staff; and

WHEREAS, this request includes the Colorado Transit Coalitions' (CASTA) request for Section 5309 Bus Discretionary funds; and

WHEREAS, this request also includes a funding request for the RTD FasTracks West Corridor, East Corridor, and Gold Line projects; and

WHEREAS, the Commission believes the transit requests support the Department of Transportation's Intermodal goals and congestion mitigation efforts for the state transportation system.

NOW THEREFORE BE IT RESOLVED, the list of Fiscal Year 2011 priority projects dated January 8, 2010 and contained in the official agenda is hereby approved. The Department is instructed to submit the lists to the Colorado Congressional Delegation and to relevant federal agencies for consideration and approval.

Discuss and Act on Federal Livability Initiative Program Grants

Commissioner Krawzoff did not participate in this item and excused himself from the discussion. DTD Director Jennifer Finch presented to the Commission. She pointed out some changes in the resolution and the list of projects. This is a Livability Initiative program of FTA, it is also a national competitive program and the rural areas must submit their application through a consolidated state grant request. CDOT works with CASTA to put together a list of projects. There is no CDOT match required for this grant and CDOT does not administer the grants. The local transit agencies must provide the local match. The list includes \$75 million in requests from 16 interested agencies/organizations.

Commissioner Erickson moved for adoption of the resolution. Commissioner Cheroutes seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC-1813

WHEREAS, the Federal Transit Administration published a notification in the Federal Register dated December 8, 2009, announcing the availability of funds through the Section 5309 Bus and Bus Facilities Livability Initiative Program Grants program, hereinafter referred to as the Livability Grant; and

WHEREAS, the solicitation requires that "Proposals for funding eligible projects in rural (non-urbanized) areas must be submitted as part of a consolidated State application"; and

WHEREAS, the Federal Register notification does not require the states to administer any Livability Grant that is awarded, nor to select or prioritize project applications, nor to provide any matching funds; and

WHEREAS, the Transportation Commission wishes to ensure that eligible projects from non-urbanized areas in the state have an opportunity to compete for Livability Grant funds; and

WHEREAS, the Colorado Association of Transit Agencies, in cooperation with CDOT staff, announced to a wide variety of organizations across state the opportunity to submit an application for funding; and

WHEREAS, sixteen organizations from non-urbanized areas have informed CDOT of their interest in requesting Livability Grant funds through a consolidated State application; and

WHEREAS, CDOT staff has reviewed the preliminary information provided by these interested organizations and has determined to the best of their ability that that the projects are consistent with the 2035 Statewide Transportation Plan and are eligible under the Livability Grant guidelines; and

WHEREAS, local applicants for the Livability Grant funding are responsible for matching the grant if they are selected for funding and the Department is not required to commit funding to the Livability Grant program nor to administer the Livability Grant funds; and

WHEREAS, Transportation Commission policy requires that all grant applications be approved by the Commission in advance of submittal; and .

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves the submittal to the Federal Transit Administration a project list entitled, Table A, Colorado Section 5309 Bus and Bus Facilities Livability Initiative Program Grants Project List, as contained in the official agenda. The Executive Director is hereby directed to obtain final project information from the applicants and to submit same in a consolidated grant application to the FTA.

Amendment to the Statewide Over \$50K Project List

Rick Gabel delegated the presentation to Dave Wieder, Maintenance Operations Branch Manager. Last May, the Commission approved a list of maintenance projects that were \$50K to \$100K. Because of ARRA, the list has changed so he is requesting the Commission's approval of a new list which was presented in a handout.

Commissioner Aden asked if the industry is comfortable with dollar level. Pam Hutton commented that they meet routinely meet with the Colorado Contractor's Association and they have indicated they are satisfied with this funding level. Commissioner Cheroutes suggested that the Efficiency Committee might want to look at this process in the future.

Commissioner Aden moved for adoption of the resolution. Commissioner Kaufman seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC-1814

WHEREAS, under Senate Bill 98-148, public projects supervised by the Colorado Department of Transportation (CDOT) are exempt from the requirements of the "Construction Bidding for Public Projects Act;" and

WHEREAS, Section 24-92-109, Colorado Revised Statutes, as amended, requires CDOT to prepare cost estimates for projects to be undertaken by CDOT maintenance crews that exceed \$50 thousand, but are less than or equal to \$150 thousand for submission to the Transportation Commission for review and approval; and

WHEREAS, CDOT staff have prepared cost estimates for projects to be done in Fiscal Year 2010 as detailed in the memorandum entitled, Additions to approved over \$50,000.00 project list dated December 22, 2009; and

WHEREAS, the funding for these projects is contained in the Fiscal Year 2010 Budget.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission has reviewed the cost estimates, as contained in the official agenda, and approves CDOT Maintenance Forces undertaking the projects therein.

Discuss and Act on the IGA between Bridge Enterprise and CDOT

CFO Heather Copp presented the resolution. The resolution sets the parameters to determine how CDOT and the Bridge Enterprise work together.

Commissioner Gruen moved for adoption of the resolution. Commissioner Aden seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC -1815

WHEREAS, The General Assembly created the Bridge Enterprise as a government-owned business within CDOT, pursuant to 43-4-805 C. R. S.

WHEREAS, The purpose of the Bridge Enterprise is to finance, repair, reconstruct, and replace designated bridges in the state by entering into agreements with the Transportation Commission or CDOT; to impose a bridge safety surcharge at reasonably calculated rates; to defray costs for completion of bridges and to distribute the burden of defraying costs; to receive and expend revenues generated by the surcharge and other monies to repay; to issue revenue bonds and other obligations; to receive loans of monies under the terms of Lease Agreements and to exercise other powers necessary and appropriate to carry out these purposes; and

WHEREAS, pursuant to 43-4-805 C.R.S., the Bridge Enterprise is to operate as a government-owned business within the Department of Transportation and shall constitute an “enterprise” for purposes of Section 20 of Article X of the Colorado Constitution so long as the Bridge Enterprise retains authority to issue revenue bonds and receives less than ten percent (10%) of its total annual revenues in grants, as defined in C.R.S. 24-77-102(7), from all State and local governments combined; and

WHEREAS, FASTER (Section 43-4-805(5)(f), C.R.S.) authorizes the Bridge Enterprise Board to enter into agreements with the Commission or CDOT, to the extent authorized by the Commission; and

WHEREAS, in furtherance of the business purposes and additionally to preserve the status of the Bridge Enterprise as an “enterprise” under section 20 of article X of the State Constitution, the Bridge Enterprise Board has determined it is necessary and convenient to enter into this agreement with CDOT, acting with the authorization of the Commission, to define and provide for the roles, responsibilities, and powers of CDOT and the Bridge Enterprise relating to the Designated Bridge Projects in the State; and

NOW THEREFORE BE IT RESOLVED, the Colorado Transportation Commission hereby approves the Intergovernmental Agreement between CDOT and the Bridge Enterprise.

Discuss and Act on the Transfer of SH 196 ROW to Prowers County

RTD Tim Harris asked the Commission to approve abandonment of SH 196. Prowers County has agreed to take over ownership of the 28 miles of Highway 196 for \$9 million. He noted that it is a large payment up front but a great maintenance savings over 20 years. CDOT is close to finalizing the draft Intergovernmental Agreement. The next step is to get a resolution from the county once it is abandoned.

Commissioners Reiff and Cheroutes had many questions and concerns about the program. Commissioner Gruen and Chairwomen Killin along with Commissioner Aden provided information about this program. Harry Marrow, the attorney general and CDOT's lawyer answered questions. Chief Engineer Pam Hutton also explained the Maintenance Incentive Pilot Program to them.

Commissioner Gruen moved for adoption of the resolution. Commissioner seconded the motion and on a vote of the Commission Aden, the following resolution was unanimously adopted.

Resolution Number TC-1816

WHEREAS, The Department of Transportation owns 26.9 linear miles of Highway in Prowers County identified as State Highway 196 (SH 196); and

WHEREAS, that portion of SH 196 is located between, and connecting US 385 and US 287 (Exhibit A, Page 1 of 6); and

WHEREAS, due to improvements to US 287 and US 50, SH 196 no longer supports sufficient traffic to justify the maintenance expense (Exhibit A, pages 1 and 3); and WHEREAS, Region 2 has determined that abandoning this portion of SH 196 would be in the best interest of Colorado taxpayers; and

WHEREAS, the Colorado Revised Statutes 43-2-106 (1) (a) provides that the Transportation Commission may determine that a state highway, or portion thereof, no longer functions as a state highway, and with the agreement of each affected county or municipality, the state highway, or portion thereof, can be abandoned to the affected county or municipality; and

WHEREAS, the Transportation Commission adopted Policy Directive 1003.0 to authorize the Maintenance Incentive Program as a pilot program and to establish the desirability of an alternative approach for abandonment of highway right-of-way that is no longer needed for the intent of the state highway system; and

WHEREAS, the Executive Director of CDOT adopted Procedural Directive 1003.1 to provide for the implementation of the Maintenance Incentive Pilot Program established by Policy Directive 1003.0; and

WHEREAS, Prowers County proposed to take ownership of SH 196 from mile post 8.9 to mile post 35.6, as described in Exhibit A and Exhibit C which are attached hereto, in exchange for a payment of \$9,000,000.00 from CDOT; and

WHEREAS, \$9,000,000.00 is anticipated to be less than the amount CDOT reasonably expects to expend to maintain, preserve, or improve SH 196 over the next 20 years; and

WHEREAS, the Transportation Commission adopted Resolution Number TC-1754 authorizing said proposal of Local Agency(s) be funded and specifying that the highway segment would be transferred in an "as is" condition in exchange for the payment by CDOT to Local Agency(s) on the date of the transfer of ownership; and

WHEREAS, Colorado Revised Statutes 43-2-106 (1) (b) further provides that any county or municipality receiving a payment from CDOT as a result of CRS 43-2-106 (1)

(a) shall credit the payment to a special fund to be used only for transportation-related expenditures; and

WHEREAS, the Parties desire to enter into an Intergovernmental Agreement (IGA) and agree upon the conditions of the abandonment of said highway segment by the State and acceptance by Prowers County pursuant to the terms and conditions of the IGA; and

WHEREAS, the governing body of Prowers County shall adopt a resolution agreeing to the state's abandonment of the portion of SH196 agreeing that said highway segment no longer serves the ongoing purposes of the state highway system; committing Prowers County to assume ownership of said highway segment in the "as is" condition; and

WHEREAS, within 90 days of the official notification of such abandonment by the Transportation Commission, Prowers County shall execute a Resolution or Ordinance accepting the abandoned portion of SH 196 as a county road; and

WHEREAS, within 90 days of the date of execution of the Prowers County Resolution or Ordinance accepting the abandoned portion of SH 196, CDOT will execute a quitclaim deed that will include a reversion provision stating that if the property that is the subject of the quit claim deed is not used for transportation purposes, title to such property will automatically revert back to CDOT; and

WHEREAS, concurrent with the execution of the quitclaim deed, CDOT will provide payment of \$9,000,000.00 to Prowers County, and that shall constitute the total consideration from the State to Prowers County related to the abandonment and transfer of the Abandoned Highway;
And

WHEREAS, the Chief Engineer, the Department of Transportation, and the Executive Director are authorized pursuant to Colorado Revised Statutes (C.R.S.) 29-1-203, 43-1-106, 43-1-110, 43-1-114, 43-2-101, 43-2-106, 43-2-110, 43-2-144, and 43-2-303, to make determinations regarding abandonment of State Highway(s) to affected county(s) or municipality(s); And

WHEREAS, the Transportation Commission concurs with the Chief Engineer that SH 196 is no longer needed for State Highway purposes; and

NOW THEREFORE BE IT RESOLVED, pursuant to the provisions of the Colorado Revised Statutes, Sections 29-1-203, 43-1-106, 43-1-110, 43-1-114, 43-2-101, 43-2-106, 43-2-110, 43-2-144, and 43-2-303, the Department of Transportation be given authority to declare that portion of SH 196 abandoned, as shown in Exhibit A, containing approximately 29.6 linear miles.

Discuss and Act on SAP Equipment Upgrade

CIO Kim Heldman requested approval of resolution to purchase equipment for continued SAP support. This was discussed in a workshop the previous day.

Commissioner Aden moved for adoption of the resolution. Commissioner Erikson seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC-1817

WHEREAS, the implementation of SAP, to accommodate the business requirements for the management of financial and human resource business processes, at CDOT at the recommendation and approval of CDOT Executive Management and the Transportation Commission was completed in 2006; and

WHEREAS, the purpose of SAP is to provide a single, robust, stable, platform to process CDOT's financial and human resource business transactions; and

WHEREAS, the warranties for the infrastructure initially implemented to support SAP have expired; and

WHEREAS, CDOT's continued improvements and expanded usage of the SAP system has resulted in the need for additional and more robust infrastructure; and

WHEREAS, the stability of CDOT's system of record, SAP, is dependent on the replacement and upgrade of the infrastructure; and

WHEREAS, the FY 2010 SAP budget includes line items to purchase infrastructure to replace and update the infrastructure for the SAP system; and

WHEREAS, the upgrade of SAP to ERP 6.0 is dependent on this infrastructure purchase; and

WHEREAS, delaying this purchase will require the delay of the upgrade from March, 2010 to September, 2010; and

WHEREAS, the delay of the upgrade will increase the cost to the upgrade project significantly; and

WHEREAS, the delay of the upgrade will delay the availability of new functionality desired in business areas such as Financials and Treasury;

NOW THEREFORE BE IT RESOLVED, the Commission has determined that for state FY 2010 \$1,082,000 is allocated under the SAP program budget as capital funds to procure infrastructure equipment required for the SAP system.

FURTHER, the procurement process for this equipment may begin upon approval of this resolution.

Discuss and Act on 8th Budget Supplement

Ben Stein presented the 8th budget supplement. He highlighted a few critical items of interest to the Commission including the Turkey Creek Bridge in Region 2, the Region 3 materials lab and a walk on item for properties under the COP program. It was found that the Region 6 materials lab taxes were not properly paid in the 2004 closing resulting in a need of \$55,600 to pay this off. Mr. Stein noted that every month it is not paid off, the interest increases. Mr. Morrow is negotiating with county in the hopes of lowering the amount.

Commissioner Ortiz moved for adoption of the resolution. Commissioner Kaufman seconded the motion and on a vote of the Commission, the following resolution was unanimously adopted.

Resolution Number TC-1818

BE IT RESOLVED, that the Eighth Supplement to the Fiscal Year 2009-2010 Budget and Allocation of the TC Contingency be approved by the Commission.

Achievements

Executive Director George presented a CDOT Achievement Award to a member of CDOT's maintenance ranks. He discussed the comprehensive first aid and first response training that prepares CDOT maintenance employees at the training academy and how essential it is and how it can be put to good use. Director George noted that CDOT employees watch out for their own safety and well-being, as well as the safety and well-being of their co-workers.

He then introduced award nominator, Wes Templeton from Brush.

Wes Templeton thanked Director George and the Colorado Transportation Commission. He shared his story of having lunch in the break room on July 15 with two co-workers, both heavy equipment mechanics.

One of them Cy Kipp, got up from the table and headed to the sink in the adjacent meeting room. They sensed that something was wrong and followed him but he was unable to speak and motioned that he wasn't OK.

They realized that he was choking. Jim Pickett performed the Heimlich maneuver dislodged the cause of Cy's choking.

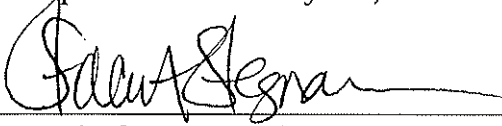
Mr. Templeton noted that because of Mr. Pickett's quick actions, Cy Kipp, who is here with us today, was able to go home that evening safe and sound to his family. The

CDOT Achievement Award in the double categories of Safety and Service was then presented to Jim Pickett.

Director George congratulated Mr. Pickett on a well-deserved award and thanked Mr. Templeton for making the nomination as well as recognizing Mr. Kipp for being with us here today.

Adjournment

And there being no further matters to discuss, Chairwoman Killin adjourned the meeting at 11:28 p.m. on January 21, 2010.

A handwritten signature in black ink, appearing to read "Stacey A. Stegman", written over a horizontal line.

Stacey A. Stegman, Secretary
Transportation Commission of Colorado